IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 596 of 1996

For Approval and Signature:

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
MOHMAD AZIZ A RASID ANSARI & 1 - Opponent(s)

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Appearance :
Mr.K.T.Dave,learned APP for Appellant
MR AZIZ AN ALVI for Respondents

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CORAM : HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 12/10/2007

ORAL JUDGMENT

1. The instant appeal under Section 378 of the Code of Criminal Procedure, 1973 has been filed by the appellant State of Gujarat against the judgment and order dated 9th May, 1996 rendered in Criminal Case No.658 of 1994 by the learned Chief Metropolitan Magistrate, Ahmedabad whereby both the respondents (original accused) have been acquitted of the charges levelled against them for the offences punishable under Sections 420 and 114 of the Indian Penal Code.

2. Briefly stated, the case of the prosecution is that a complaint was filed by Mohamad Hasim Mohamad Yakub on 16th September, 1994 to the effect that the respondents had taken Rs.25,000/- from the complainant representing that they would make arrangements to send the complainant to Saudi Arabia, including obtaining of the Visa and other immigration procedures. The narration in the complaint is to the effect that the respondent No.1 represented to the complainant that he was doing the business of sending persons to Saudi Arabia and the respondent No.2 confirmed the same, upon which the complainant having full faith upon the respondents handed over Rs.25,000/- to the respondent No.1 in the presence of

respondent No.2, at the address given by them. It is further stated in the complaint that thereafter, the respondent No.1 handed over an Air ticket purchased for Rs.11,000/- to the complainant, saying that as soon as the ticket shall be confirmed, the complainant would be informed by telephone. The complainant telephoned the respondent No.1 at Mumbai on 1st June,1994 and was informed by the respondent No.1 that his Air ticket has been confirmed and that the complainant was to come to Mumbai for medical check-up and other formalities. The complainant further narrates in the complaint that after going to Mumbai and having the medical check up done he was informed by the respondent No.1 that he would have to wait for a few days more, after which the respondent No.1 would inform him about the travelling date. It is the case of the complainant that thereafter the respondent No.1 went away, and on searching for him, could not be found. Finally, on going to the address given by the respondent No.2, the respondent No.1 was found there and when the complainant asked him about sending him to Saudi Arabia and about the amount of Rs.25,000/- given to him for this purpose, the respondent No.1 feigned ignorance and did not give any satisfactory answer. A complaint was therefore

filed before the Court of the learned Chief Metropolitan Magistrate, Ahmedabad. On directions being given for investigation under Section 156(3) of the Code of Criminal Procedure by the competent court, the investigative machinery was set into motion. The charge-sheet was filed and after the accused were informed about the case against them,the charge was framed which is at Exh.2. The further statements of the accused were recorded. The defence of the accused persons was of total denial.

3. After hearing the learned counsel for the parties and considering the evidence on record, the trial court came to the conclusion that the prosecution had not been able to prove the case against the accused persons beyond reasonable doubt and, therefore, recorded a finding of acquittal in favour of the respondents, giving rise to the present appeal.

4. This Court has heard Mr.K.T.Dave, learned Additional Public Prosecutor for the appellant and Mr.Aziz Ahmed N.Alvi, learned counsel for the respondents and has considered the record and proceedings of the case which have been summoned from

the trial court. Mr.K.T.Dave, learned Additional Public Prosecutor has submitted that the order of acquittal passed by the trial court is against the facts and evidence on record. It is submitted by the learned Additional Public Prosecutor that the trial court ought to have believed the eye-witness Mohamadbhai Aminbhai who gave currency notes of Rs.25,000/- to respondent No.2 on behalf of the complainant, which was given by respondent No.2 to his son, who is respondent No.1. Mr.Dave has further submitted that the learned trial Magistrate has erred in disbelieving the independent eye-witness Usmanbhai Sulemanbhai in whose presence the amount was given to the accused persons and has urged that the impugned judgment and order be set aside and the appeal be allowed.

5. On the other hand, Mr..Aziz Ahmed N.Alvi, learned counsel for the respondents, has submitted that there is no infirmity in the judgment and order rendered by the trial court. He has submitted that the prosecution has failed to establish the case against the respondents beyond the shadow of doubt and, therefore, the trial court has come to a correct conclusion in acquitting the respondents.

Learned counsel for the respondents has also submitted that since this is an appeal against an order of acquittal, the court should adopt the view favourable to the accused and, therefore, the appeal deserves to be dismissed and the judgment and order of the trial court upheld.

6. After having considered the rival submissions of the learned counsel for the parties and having scrutinised the record, it become necessary to evaluate and re-appreciate the evidence on record in the light of the findings of the trial court.

7. In support of its case, the prosecution has examined four witnesses. P.W.1 is the complainant himself, who has been examined at Exh.5. In his testimony, P.W.1 states that he was to go to Saudi Arabia and his friend had sent a Visa for him from Saudi Arabia. Thereafter, this witness states that he contacted the respondent No.1 who had come from Mumbai and who informed him that he had sent other persons to Saudi Arabia and would also arrange to send him. This witness further states that on asking the respondent No.2 he, too, confirmed this and believing the respondents, P.W.1 enquired about the

amount of expenses that would be involved. The respondent No.1 stated that expenses will come to Rs.25,000/- and upon this, P.W.1 gave the amount of Rs.25,000/- to respondent No.2 in the presence of his father-in-law. According to the testimony of P.W.1, the amount of Rs.25,000/- was towards Visa, enquiry, medical check up, Air ticket, etc. and on the next day the respondent No.1 took him to Mumbai and had the medical check-up done. This witness states that Air ticket worth Rs.11,700/- was purchased by the respondent No.1 who told this witness to enquire after three to four days regarding the clearance of the immigration proceedings. P.W.1 states that, thereafter, he returned to Ahmedabad and after approximately ten days, he was informed by the respondent No.1 that his ticket had been confirmed for the 12th, upon which he reached Mumbai one day before the 12th alongwith his baggage. This witness further testifies that the whereabouts of the respondent No.1 was not known but after searching for seven to eight days he was found and on asking about the ticket etc. the respondent No.1 feigned complete ignorance regarding the ticket, Passport and other proceedings and gave abuses to this witness. P.W.1 further states that on his return to Ahmedabad he

informed the respondent No.2 of the entire incident that had occurred with the respondent No.1, after which the respondent No.2 went to Mumbai and upon his return, he also said that he does not know anything about the matter, which led this witness to lodge the complaint against both the respondents.

8. P.W.2 Mohamadbhai Aminbhai,who has been examined at Exh.9 is the father-in-law of the complainant. According to the testimony of P.W.2 the respondent No.2 is the father of respondent No.1. This witness states that the complainant who is his son-in-law, wanted to go to Saudi Arabia, for which purpose he had a talk with the respondents and respondent No.2 told him that his son i.e. respondent No.1 was doing the work of getting Visa etc and he would do the needful. P.W.2 further states that his son-in-law (complainant) had some money with him and this witness gave some amount towards expenses and a total of Rs.25,000/- was collected and given to respondent No.2 by P.W.2, who counted the money and gave it to respondent No.1 saying that it was the correct amount. According to the testimony of P.W.2 thereafter the respondent No.1 took the complainant to Mumbai and after keeping him there for two – four

days he said that he could not do anything in the matter and the complainant could do whatever he wanted.

9. Next witness is P.W.3 Usmanbhai Sulemanbhai, who has been examined at Exh.12. He is the neighbour of the complainant. The testimony of this witness is also similar to the deposition of the complainant himself in all material particulars. This witness has stated that the respondent No.1 refused to return the amount of Rs.25,000/- to the complainant. Therefore, the complainant had to lodge the complaint.

10. P.W.4 Ramnaresh Ramajod is the investigating officer of this case and is a formal police witness.

11. This, in totality is the oral evidence brought on recored by the prosecution. Certain documentary evidence is also presented on record which is relevant. Exh.7 is the letter written by the respondent No.1 to the complainant, which has been brought on record during the cross-examination of the complainant. The vernacular translation of this document, the original of which is in Urdu, has been reproduced in the judgment of the trial court.

According to this translation the respondent No.1 has written that the complainant had taken him to a person named Mustafa who was not a reliable person and the complainant had handed over the money to Mustafa. The letter at Exh.7 gives the impression that the money was handed over by the complainant to Mustafa in the presence of respondent No.1, who was standing as a guarantor in the transaction. This piece of documentary evidence is in contradiction to the deposition of the complainant and other prosecution witnesses who have stated that the amount of Rs.25,000/- was handed over to respondent No.1 and the respondent No.2 had given an assurance of the work being done.

12. As discussed hereinabove, the oral and documentary evidence, reveals several discrepancies and contradictions in the statements of the prosecution witnesses regarding handing over of the money to the respondents. It is relevant to notice that P.W.2 is the father-in-law of the complainant. His testimony is full of contradictions and improvements. At one place he states that the money was handed over in the month of Ramzan and at another place states that it was handed over on the day of

Mithi Id, at the house of the respondents. According to this witness initially an amount of Rs.8000/- was given to the respondents. Thereafter Rs.10,000/- was borrowed by the complainant from his brother. Similarly, P.W.3 states that he does not remember on which date the money was handed over. This witness also gives the details of the denomination of the currency notes and states that no receipt was taken on handing over the money by the complainant. According to P.W.3 when he was coming from his house he met the complainant on the way and accompanied him to hand over the money to the respondents. The depositions of these witnesses do not inspire any confidence and are, therefore, not worthy of belief.

13. After having re-evaluated and re-appreciated the evidence on record, this Court finds that the prosecution witnesses have all given different versions of the same incident regarding handing over of the money to respondents, none of which corroborates the other, whereas the letter at Exh.7 brings out a totally different story. On the whole, the evidence brought on record by the prosecution is not sufficient to bring home the guilt of the respondents for the offences with which they are charged. There is not even an iota of evidence on

record to prove that the respondents have dishonestly cheated the complainant of the amount of Rs.25,000/-.

14. In the opinion of this Court, the trial court has rightly recorded a finding of acquittal in favour of the respondents. The reasons recorded by the learned trial Magistrate are plausible, cogent and convincing. There is no material irregularity or infirmity in the findings recorded by the trial court. In an appeal against an order of acquittal, the appellate court would be slow to interfere, if it is possible to arrive at two views on the basis of evidence on record. In the present case, the view arrived at by the trial court is, in the opinion of this court, valid and justifiable in the light of the evidence on record.

15. For the foregoing reasons, no ground has been made out to interfere with the judgment and order of the trial court. The appeal,which is devoid of merits, is therefore dismissed.

(Smt.Abhilasha Kumari,J)

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